IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 323 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

RAMILABEN BHIKHABHAI VASAVA

Appearance:

1. First Appeal No. 323 of 1999

MR UM SHASTRI for appellant No. 1

MR JC SHETH for appellant No. 1

MR DN PANDYA for Respondent No. 1-6

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 24/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

1. The appellant Union of India had challenged the judgment and award passed by the Railway Claims Tribunal, Bench at Ahmedabad dated 5.1.99 in Claim Application No. 0A9800042 wherein the Tribunal has allowed the Application of the respondents applicants by directing the appellant opponent to pay a sum of Rs.4 lacs within sixty days from the date of judgment, failing which 12% interest will accrue on the said amount from the date of judgment and also passed order of distribution of the said amount. Alongwith the Appeal, Civil Application for stay was submitted and after hearing the said Application the said Civil Application was disposed of by giving direction for withdrawal of the amount. A note was filed by Mr. Pandya, learned advocate, for fixing early date of hearing as the Appeals were pending since 1999 for final hearing and we had fixed this Appeal alongwith other Appeals.

2. During hearing, Mr. J.C.Sheth, the learned counsel appearing on behalf of the appellant Railway, has, while arguing the matter, taken us through the judgment under challenge and it is his contention that the Railway Claims Tribunal has without giving any opportunity to the appellant for leading evidence in support of its case allowed the Application, which has resulted into miscarriage of justice. It is also his submission that reading the judgment and award under challenge, the disposal of the said Claim Application can be said to be a disposal of the Application mechanically. As the record and proceedings is also available with us, Mr.Sheth has also taken us through the record and it is his submission that the Application submitted on behalf of the appellant before the Tribunal for examining the witnesses as well as for production of documents, was rejected by the Tribunal and on the very day, the Tribunal has disposed of the Application by granting Application, as aforesaid, in favour of the respondents applicants.

3. Mr. Pandya, the learned advocate appearing on behalf of the respondents claimants, has supported the order under challenge. It is his submission that while filing Application and while leading evidence on behalf of the applicants, applicants had proved relevant documents and further that considering the evidence of the applicants, the Tribunal has granted Application by awarding compensation as provided under the provisions of

Railways Act and Railway Accident and Untoward Incident (Compensation) Amendment Rules, 1997 and his request is that the Tribunal has rightly granted compensation and prayed that the Appeal filed by the appellants be dismissed with costs.

4. In light of the submission made before us, we have also perused the record and proceedings received from the Tribunal. As found from the record, the respondents applicants had filed Application before the Railway Claims Tribunal at Ahmedabad as provided under Section 16 of the Railways Act on 31.8.98 under the verification of applicant No.1. In the said Application, the applicants had furnished the details about the applicants, who had filed Application for seeking compensation. Bhikhabhai Manilal Vasava, aged 35 years, working in Bharuch Mill, was returning from Kosamba Junction to Bharuch on 8.2.98, after purchasing second class ticket from Kosamba Railway Station. The deceased was a bonafide passenger in the said train, namely, in 9 Memu and boarded the train. As there was heavy rush in the second class general Compartment, he was standing near the door. It is the case of the applicants that due to jerk in the train between Ankleshwar and Bharuch at Km. 321/30, the deceased fell down from the train, which has resulted in the fatal injuries and he died on the spot. While furnishing details, the claimants had claimed compensation of Rs.4 lacs as provided under Section 124 of the Railway Amendment Act No.13 of 1994.

5. The Application was submitted through advocate Shri S.A. Jadav. After the summons were served on the appellant-opponent, Railway authority has submitted written statement Exh.6 under the signature of Presenting Officer, Railway Claims Tribunal, Ahmedabad dated 12.10.98 and the case put forward by the original applicants was denied and it is the case of the Railway that the claimants are not entitled for any compensation as claimed in the Application. The said written statement was submitted under the verification of D.S. Meena, who was Presenting Officer of the Railway Claims Tribunal.

6. On the strength of the pleadings, the Railway Claims Tribunal has raised issues for their determination on 8.12.98. To prove the case, the applicant No.1 Ramilaben, widow of Bhikhabhai, has given evidence at Exh.8. It is her case that the deceased Bhikhabhai was her husband. On 8.2.98 deceased Bhikhabhai was returning to Bharuch from Kosamba and died in the train accident. Applicants Nos.2 and 3 are the parents of deceased

Bhikhabhai and applicant No.4 is minor daughter and applicants Nos.5 and 6 are minor sons. Her husband Bhikhabhai had gone to Kosamba to see his brother in law. He boarded the Memu train No.9 from Kosamba and he fell down from the running train between Ankleshwar and Bharuch. Her husband was removed by the Police to Civil Hospital at Bharuch. Her husband died on the spot. The Post Mortem was carried out at Bharuch Hospital. She was informed by the Railway Police at her residence at Bharuch about the accident. Her husband was carrying a bag and a sum of Rs.200/-- and also a ticket. However, there is no recovery of anything after he died.

6.1 She has proved certain documents, namely, Memo issued by SS/Ankleshwar to Railway Police Exh.9, Inquest Panchanama Exh.10, scene of offence panchanama Exh.11, Post Mortem note Exh.12, death certificate Exh.13 and the xerox copy of the ration card Exh.14 and the family photograph Exh.15.

6.2 Shri Gautam has represented before the Tribunal on behalf of the Railway and as found from the cross-examination, Ramilaben has deposed that her husband was working in private Mill and she had admitted that she had no personal knowledge about the accident as she was not present with her husband. It is further found that her marriage had taken place with the deceased before 9 years and her marriage was performed at Kosamba. She has denied that a false case has been filed by them against the Railways.

6.3 Document Exh.9, which we referred to earlier, shows that a Gateman of the Railway Crossing No.177 has informed the Railway Police that one unknown person had fallen down. This report was made on 8.2.98. The same is also received by the Police Sub Inspector of Railway Police Station, Bharuch on the very day i.e. on 8.2.98. Exh.10 is the inquest panchanama drawn by Railway Police of Ankleshwar on 9.2.98 between 7.30 and 7.55 hours in presence of panchas. Scene of offence panchanama is also drawn by the Railway Police on 9.2.98 and the P.M. Note is at Exh.12 and the cause of death is shown as "deceased died due to Nemogenic shock due to head injury". Death certificate issued by the Panchayat authority dated 6.3.98 shows that Bhikhabhai died on 9.2.98 and the same was registered under Sr.No.11 on 6.3.98. Ration card is at Exh.14 and the family Photograph of the deceased is at Exh.15.

7. As discussed hereinabove, the evidence of Smt. Ramilaben was recorded on 8.12.98. On going through the

Rojnama it appears that the case was adjourned as per the request made by representative of the Railway authority on 8.12.98. Thereafter on 14.12.98 considering the request made by the representative of the Railway to lead evidence, the case was adjourned to 5.1.99. On 5.1.99, as found from the record, the Presenting Officer has submitted Application for adjournment and the said Application praying for adjournment on the ground of leading evidence as well as for production of document was rejected by the Railway Claims Tribunal on the very day by observing;

"Heard. Having sufficient documentary evidences in the case. No purpose to give further lengthening. Hence rejected today dt.05.01.99.

Sd/-"

8. It is further found from the Rojnama that on the very day, the Tribunal has, after hearing the arguments, delivered Judgment and the Application for compensation was allowed. As found from the record, the appellant Union of India had submitted Application Exh.17 before the Tribunal praying for time to produce the witnesses and also documents. The said Application was rejected on the very day on 5.1.1999 and though the Tribunal has rejected that Application, there is no mention of Application Exh.17, submitted by the appellant Union of India praying for time, in the Rojnama.

9. It is further found from the record that to prove the case on behalf of original applicants evidence was recorded on 8.12.1998 and the Tribunal has adjourned the matter considering the request made by the Railway authorities and kept the matter on 14.12.98. On that day, the Tribunal has adjourned the matter by granting request of the Railways and kept the matter on 5.1.1999. The Application Exh.17 was submitted by the Railway Authorities on 5.1.1999 and the said Application was rejected by the Tribunal, which we have already referred to earlier. It is true that the original applicants had produced documentary evidence, which they relied upon and the said documents were proved in the evidence of Ramilaben. It is also equally true that considering the request made by the Railway Authorities, twice the matter was adjourned and it is only on 5.1.1999 the Application Exh.17 was rejected. In our view, the Tribunal ought to have entertained the Application by directing the Railway authorities to produce the witnesses and also documents

on which they place reliance in support of their case by adjourning the matter on a particular day and inspite of that, if the Railway Administration fails to produce any document or lead any evidence in support of their case, it would be proper for the Tribunal to then pass appropriate orders, relying upon the documents, which are already on record of the case and which are proved from the evidence of the applicants. On reading the judgment also, it is found that the Tribunal has not given any finding in respect of the case put forward in the Written Statement by the appellants - Railway authorities and also failed to deal with the provisions of Section 124A and in absence of such finding, we are of the view that the Tribunal has mechanically rejected the Application Exh.17 and on the very day had pronounced the judgment after considering the arguments made before it and in absence of such finding, award under challenge deserves to be set aside. According to us, the Tribunal was required to appreciate the evidence and record its finding, whether the defence taken by the Railway is proper or not and then to dispose of the Application and if the Tribunal is satisfied that the applicants had proved their case for seeking compensation, then the Tribunal is required to pass award. Accordingly we are inclined to allow the Appeal and set aside the award under challenge only on the ground that no opportunity was given to the appellant railway authorities to lead evidence.

10. Accordingly while setting aside the award under challenge, we are required to give directions in the interest of justice and to protect the interest of parties, in view of the fact that the deceased had died on 8.2.1998 and as Mr.J.C.Sheth, learned counsel, undertakes that the witnesses, which they want to examine and the documents that they want to rely upon, will be placed before the Tribunal on 28.4.2003. In view of the statement made by Mr. Sheth, Mr. Pandya appearing for the respondents -claimants had also submitted that the respondents claimants and/or their advocate shall remain present before the Railway Claims Tribunal on 28.4.2003 and they will give co-operation in disposing of the claim Application pending before the Railway Claims Tribunal. In case, if the appellant - railway authorities fail to produce witnesses before the Railway Claims Tribunal on the date fixed, the Tribunal shall proceed with the said Claim Application and pass appropriate orders on the basis of the evidence led by the respondents - applicants and decide the same in accordance with law.

11. Appeal is accordingly allowed in the above terms

with no order as to costs. Writ to be sent forthwith to the Railway Claims Tribunal, Ahmedabad Bench. Record and proceedings received are ordered to be send back to the Railway Claims Tribunal. As per the assurance given by the counsel appearing in the matter, the parties/witnesses shall remain present before the Railway Claims Tribunal on 28.4.2003 and, thereafter, as per the direction given by the Tribunal, they will co-operate in the proceedings before the Railway Claims Tribunal. Accordingly we direct the Railway Claims Tribunal to decide the Claim Application in accordance with law on or before 30.6.2003.

(D.K.Trivedi,J)

(K.M.Mehta,J)

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